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IN THE
Supreme Court of the United States

October Term, 1978

No. 89-205

STANLEY R. RADER,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

**Petition for Writ of Certiorari to the Supreme Court
of the State of California.**

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SUBJECT INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented for Review	2
Statutory and Constitutional Provisions Involved	2
Statement of the Case	3
A. Related Litigation	3
B. The Present Proceeding	5
Finality of Judgment Below	7
Reasons for Granting the Writ	9

I

The State's Action Against the Worldwide Church of God Violates Religious Freedoms Guaranteed by the First Amendment. Petitioner May Not Be Forced to Testify in Proceedings Which Exceed the Constitutional Power of the State	9
A. Petitioner Has No Duty to Testify in Proceedings Beyond the Jurisdiction of His Inquisitor	9
B. The Free Exercise and Establishment Clauses of the First Amendment Bar the Attorney General From Civil Jurisdiction to Supervise the Affairs of a Church	9

II

The Order Compelling Petitioner to Testify While Concurrent Criminal Proceedings Are Pending Subverts His Constitutional Rights Under the Fifth and Fourteenth Amendments	13
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ii.

	Page
A. The Attorney General May Not Conduct a Civil Proceeding to Discover Evidence for Use in a Criminal Prosecution	14
B. The Attorney General May Not Call Petitioner as a Witness Against Himself While Criminal Proceedings Arising From the Same Alleged Facts Are Pending	16
III	
Petitioner, at the Focus of a Criminal Investigation, May Not Be Compelled by Law Enforcement Officers to Testify After He Has Been Advised of His Right to Remain Silent and Has Exercised That Right	20
A. The Attorney General's Investigation Is Criminal in Nature	20
B. The Attorney General's Criminal Investigation Has Focused on Petitioner	23
C. The Court-Ordered Deposition, Taken in the Offices of the Attorney General Under Threat of Civil and Penal Sanctions, Is a Custodial Interrogation	23
Conclusion	25
Appendix A. Order Hearing Denied, Dated July 5, 1979	App. p. 1
Appendix B. California Corporations Code Section 9505	2
Appendix C. Notice of Ruling on Motion for Order Compelling Deponent Stanley R. Rader to Answer Questions Propounded at Deposition	3

iii.

TABLE OF AUTHORITIES CITED

Cases	Page
A. & M. Records, Inc. v. Heilman, 75 Cal.App.3d 554, 142 Cal.Rptr. 396 (1977)	8
Beckwith v. United States, 425 U.S. 341 (1975)	25
Campbell v. Eastland, 307 F.2d 478 (5th Cir. 1962), cert. denied 371 U.S. 955	17
Construction Laborers v. Curry, 371 U.S. 542 (1963)	7
Cox Broadcasting v. Cohn, 420 U.S. 469 (1975) ..	7
DeGregory v. Attorney General, 383 U.S. 825 (1966)	9
Everson v. Board of Education, 330 U.S. 1 (1957)	11
Gojack v. United States, 384 U.S. 702 (1966)	9
Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952)	12
Lemon v. Kurtzman, 403 U.S. 602 (1971)	11, 12
Lo-Ji Sales, Inc. v. New York, U.S., 60 L.Ed.2d 920 (1979)	4
Lopez, et al. v. State of California, Los Angeles Superior Court No. C 276767	14, 23
Mathis v. United States, 391 U.S. 1 (1968)	22
McSurely v. McClellan, 426 F.2d 664 (D.C. Cir. 1970)	17
Md. & Va. Churches v. Sharpsburg Church, 396 U.S. 367 (1970)	12

	Page
Mercantile Nat. Bank v. Langdeau, 371 U.S. 555 (1963)	7
Michigan v. Mosley, 423 U.S. 96 (1975)	20
Miranda v. Arizona, 384 U.S. 436 (1966)	
.....1, 2, 5, 6, 7, 15, 20, 21, 22, 23, 24, 25	
Murdock v. Pennsylvania, 319 U.S. 105 (1943)	10
National Discount Corp. v. Holzbaugh, 13 F.R.D. 236 (E.D. Mich. 1952)	18
New York v. Cathedral Academy, 434 U.S. 125 (1977)	11, 12
N.L.R.B. v. Catholic Bishop of Chicago, U.S., 59 L.Ed.2d 533 (1979)	10, 11
Orozco v. Texas, 394 U.S. 324 (1969)	24
Paul Harrigan & Sons v. Enterprise Animal Oil Co., 14 F.R.D. 333 (E.D. Pa. 1953)	18
People v. Arnold, 66 Cal.2d 438, 58 Cal.Rptr. 115, 426 P.2d 515 (1967)	24
People v. Worldwide Church of God, Inc., et al. (Los Angeles Sup. Ct. No. C 267607)	1, 2
Perry v. McGuire, 36 F.R.D. 272 (S.D.N.Y. 1964)	17, 18
Presbyterian Church v. Blue Hull Mem. Presb. Church, 393 U.S. 440 (1969)	12
Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945)	7
Romanelli v. C.I.R., 466 F.2d 872 (7th Cir. 1972)	16

	Page
Securities & Exch. Com'n v. Gilbert, 79 F.R.D. 683 (S.D.N.Y. 1978)	19
Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976)	12
Shaffer v. Heitner, 433 U.S. 186 (1977)	7
Sweezy v. New Hampshire, 354 U.S. 234 (1957) ..	9
United States v. Bachman, 267 F.Supp. 593 (W.D. Pa. 1966)	24
United States v. Caiello, 420 F.2d 471 (2d Cir. 1969)	25
United States v. Guerrina, 112 F.Supp. 126 (E.D. Pa. 1953)	16
United States v. Hankins, 565 F.2d 1344 (5th Cir. 1978)	15, 19, 20, 21
United States v. Kordel, 397 U.S. 1 (1970)	15
United States v. Lipshitz, 132 F.Supp. 519 (E.D. N.Y. 1955)	16
United States v. Parrott, 248 F.Supp. 196 (D.D.C. 1965)	16, 17
United States v. Procter & Gamble Co., 356 U.S. 677 (1958)	14
United States v. Rand, 308 F.Supp. 1231 (N.D. Ohio 1970)	15
United States v. Simon, 373 F.2d 649 (2d Cir. 1967), vacated as moot 389 U.S. 425 (1967) ..	15
Worldwide Church of God v. State of California, No. 78-1720	1, 3

Statutes	Page
California Corporations Code, Sec. 2253	21
California Corporations Code, Secs. 2254-2255	21
California Corporations Code, Sec. 2255	21
California Corporations Code, Sec. 9505	3, 10
California Penal Code, Sec. 508	21
United States Code, Title 28, Sec. 1257(3)	2
United States Constitution, First Amendment	
.....2, 3, 4, 5, 6, 8, 9, 10, 11, 15, 25	25
United States Constitution, Fifth Amendment	
.....2, 3, 13, 15, 16, 18, 25	25
United States Constitution, Fourteenth Amendment	
.....2, 3, 13, 25	25

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**Petition for Writ of Certiorari to the Supreme Court
of the State of California.**

This is a companion case to *Worldwide Church of God v. State of California*, No. 78-1720, now pending before this Court on Petition for Writ of Certiorari. In this case Petitioner Stanley R. Rader respectfully prays that a Writ of Certiorari issue to review a final determination by the California Supreme Court that Petitioner has no right to refuse to submit to interrogation after the State Attorney General has advised Petitioner of his *Miranda* rights and declared he would supply Petitioner's interrogation testimony to pending and contemplated criminal investigations.

Opinion Below.

On May 7, 1979, the Los Angeles Superior Court ordered Petitioner to submit to interrogation by the California Attorney General in the action *People v. Worldwide Church of God, Inc., et al.* (Los Angeles

Sup. Ct. No. C 267607). A Petition for Writ of Prohibition/Mandate to the California Court of Appeal was denied on May 25, 1979. The California Supreme Court denied a Petition for Hearing on July 5, 1979. (A copy of the Supreme Court's order is attached as Appendix A.)

Jurisdiction.

This Court's jurisdiction rests on 28 U.S.C. section 1257(3).

Questions Presented for Review.

1. Can the State of California, consistent with the Religion Clauses of the First Amendment, maintain an action against Petitioner and his Church to obtain and audit all Church records, pass on the propriety of religious expenditures, remove and replace Church leaders, and restructure Church governance, and in connection therewith compel Petitioner, a high Church official and personal advisor to the spiritual leader of the Church, to submit to comprehensive interrogation concerning Church affairs?

2. Can the State of California, consistent with the Fifth and Fourteenth Amendments, compel Petitioner to submit to interrogation by the State Attorney General after the Attorney General advised Petitioner of his *Miranda* rights and announced his intention to supply Petitioner's statements to any pending or contemplated criminal investigation and Petitioner has invoked his right to remain silent?

Statutory and Constitutional Provisions Involved.

The rights asserted by Petitioner arise under the Religion Clauses of the First Amendment, and the Fifth and Fourteenth Amendments of the United States

Constitution. Respondent grounds its authority in part on California Corporations Code section 9505 which appears as Appendix B.

Statement of the Case.

A. Related Litigation.

The first phase of the State of California's assault on the Worldwide Church of God is already before this Court for review on Petition for Writ of Certiorari in *Worldwide Church of God v. State of California*, No. 78-1720. In that first phase the State Attorney General obtained appointment of a receiver *ex parte* on the basis of allegations and representations by some dissident ex-members that Church officers were misappropriating assets, liquidating Church property below value and destroying Church records.¹ Refusing to acknowledge that any First Amendment rights were involved, the trial court put a receiver in possession and control of Church operations, records and assets. After two months, the court dissolved the receivership but ordered the Church to make virtually all of its records available to the Attorney General for inspection; when the Church appealed from this order, the trial court reinstated the receivership as punishment. The California Supreme Court by a 4-3 decision declined to review the First Amendment issues inherent in the receivership proceedings, and the Church petitioned this Court for vindication of its First Amendment freedoms.

¹These allegations were later found to be false. While the Attorney General continues to charge "misappropriation", as he uses the term it means expenditures of which he disapproves.

The Attorney General has meanwhile launched the second phase of his assault on the Church, its leaders and their First Amendment freedoms, through discovery proceedings. The Attorney General has already obtained, without the Church's knowledge or consent, over 800 Church documents, including those of the most sensitive and confidential nature, *e.g.*, letters to the ministry, contribution data, mailing lists, internal communications, and complete financial information for at least the last ten years.² Discovery proceedings take place virtually on a daily basis. The Attorney General has noticed depositions for all of the major Church officers, including Herbert W. Armstrong, Pastor General and spiritual and temporal leader of the Church. If permitted to take these depositions, the Attorney General will achieve through discovery many of his objectives in this lawsuit, including comprehensive review of all Church records, and, should Church leaders decline to testify, disparagement of their reputations with the Church membership and perhaps their incarceration.

In these discovery proceedings the trial court has again accepted and endorsed the Attorney General's argument that First Amendment rights are not involved.

²Petitioner cannot be certain how the Attorney General came into possession of this material. It seems likely, however, that the receiver, who confiscated boxloads of Church documents in early January, delivered them to the Attorney General as directed by court orders of January 12 and 19.

There is a striking parallel between this case and *Lo-Ji Sales, Inc. v. New York*, U.S., 60 L.Ed.2d 920 (1979) in which a court officer issued a virtually blank search warrant which he then helped execute by personally inspecting materials and authorizing seizure of items later included in the warrant. As this Court admonished (60 L.Ed.2d at 927): "This search warrant and what followed on petitioner's premises are reminiscent of the general warrant or writ of assistance of the 18th century against which the Fourth Amendment was intended to protect."

B. The Present Proceeding.

As the present litigation has developed since January 2, Petitioner Stanley R. Rader (who is the chief personal advisor to Herbert W. Armstrong, the spiritual and temporal leader of the Church) has emerged as one of the principal targets of the Attorney General's attack. Both in open court and to the media, the Attorney General has repeatedly vilified and disparaged Petitioner, accused him of theft and fraud, and has addressed him and described him in language utterly inappropriate for a public official in a judicial proceeding.³

On April 3, 1979, the Attorney General commenced taking Petitioner's deposition. Petitioner answered some questions, but he refused to answer others on First Amendment grounds. When the deposition resumed on April 4, the Attorney General advised Petitioner of his *Miranda* rights, including his right to remain silent (Exh. E,⁴ p 98). Petitioner exercised his right to remain silent and the deposition was terminated (Exh. E, p. 100).

³Characteristic of the fury of the Attorney General's attack on Petitioner is language in his First Amended Complaint in which the Attorney General seeks an order removing Petitioner and other Church leaders from any position of leadership in the Church and forever barring them from holding such positions in the Church or in any charitable corporation in California. In other words, the Attorney General in a civil proceeding seeks an order stripping Petitioner and others of their civil rights as if they were convicted felons. Indeed, we know of no rule of law which would permit a court to bar even a convicted felon from holding church office, contrary to the fundamental Christian doctrine of redemption.

⁴All exhibit references are to those accompanying the Petition for Writ of Prohibition/Mandate in the California Court of Appeal.

The Attorney General then reversed himself and sought an order compelling Petitioner to resume his deposition notwithstanding the *Miranda* warning and Petitioner's invocation of his right to remain silent (Exh. F). The trial court requested the Attorney General to file a declaration from the head of his Criminal Division stating Petitioner is not the subject of any pending or contemplated criminal investigation (Exh. H, pp. 6-9), but the Attorney General failed to do so. Instead a Deputy in the Attorney General's Charitable Trust Section filed a declaration stating that his office had not conducted any such proceeding or investigation *to date*, but emphasizing that it was the Attorney General's obligation and intention to refer any possible evidence of criminal conduct to the appropriate enforcement agencies (Exh. I).⁵

Nevertheless, the trial court ordered Petitioner to resume his deposition on May 29, 1979, and overruled all First Amendment objections to questions asked before the *Miranda* warnings were given (Exh. A; Exh. L, pp. 12, 15-16; see Notice of Ruling, attached as Appendix C).

Clearly, the Attorney General is attempting to use an unconstitutional civil proceeding which is virtually limitless in scope and which requires no showing of

⁵In a document filed in the California Supreme Court in this proceeding, the Attorney General has stated it is well known Petitioner is the subject of a pending "criminal proceeding." He did not elaborate. Petitioner is aware that the criminal branch of the Internal Revenue Service commenced an investigation in January, 1979, shortly after the present action began (no doubt at the instigation of the Attorney General or the dissident ex-members who initiated the action). Petitioner is also informed that the Attorney General has been funneling information obtained in this case to the Los Angeles District Attorney's Office. Petitioner is unaware of any "criminal proceeding" aside from these investigative activities.

probable cause to believe there has been wrongdoing, as a means of eliciting testimony which he intends to use in connection with subsequent criminal prosecution. As a basis for his interrogation, the Attorney General possesses over 800 detailed, confidential and illicitly-obtained Church documents; he has repeatedly accused Petitioner of crimes without any supporting evidence; he has given him a *Miranda* warning; he has assured the court he intends to refer any evidence of possible criminal conduct to other law enforcement agencies; and it appears he is in fact funneling information to such agencies. Notwithstanding, Petitioner was ordered to reappear for deposition and to answer questions.

While pursuing state appellate remedies, Petitioner declined to appear as ordered. The State sought a contempt citation and hearing on the matter is now scheduled for August 7, 1979.

Finality of Judgment Below.

Petitioner has been denied relief by the highest court in the state. This judgment, on a collateral matter in which Petitioner is threatened with irremediable loss of his rights, is final. (See, *e.g.*, *Shaffer v. Heitner*, 433 U.S. 186, 195 n. 12 (1977); *Cox Broadcasting v. Cohn*, 420 U.S. 469, 485 (1975); *Mercantile Nat. Bank v. Langdeau*, 371 U.S. 555, 558 (1963); *Construction Laborers v. Curry*, 371 U.S. 542, 549 (1963); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945).)

If relief is not granted now, Petitioner confronts a Hobson's choice. As a high officer of the Church and personal advisor to its spiritual and temporal leader,

Petitioner is privy to the most sensitive, confidential and privileged Church information. His refusal to divulge this information on First Amendment grounds has already been rejected. His only remaining vehicle for refusing to disclose this information, and the one urged on him by the Attorney General, is the assertion of the privilege against self-incrimination. Petitioner should not be forced to assert such a privilege. Were he to do so it would be used to dispare him in the eyes of the Church membership,⁶ and the Attorney General will attempt to bar his testimony at trial. (See *A. & M. Records, Inc. v. Heilman*, 75 Cal.App.3d 554, 142 Cal. Rptr. 396 (1977).) Yet if Petitioner stands on his First Amendment objections he risks a contempt citation and incarceration.

Sooner or later, the constitutional issues will have to be determined by this Court. The only question is whether it will be now, before Petitioner and the Church suffer further injury and infringement of First Amendment rights, or later, after the Attorney General has succeeded in destroying the Church in California, seriously impairing its religious programs worldwide,⁷ compromising the privacy and sanctity of Church documents, and irreparably and unjustifiably staining the reputation of the Church leadership.

⁶Thus the Attorney General continues to act in harmony with the goals of the dissident ex-members who initiated the action.

⁷To date, this action, including the receivership, has cost the Church in excess of \$5,000,000 in lost revenues, additional expenses and the like. As a result, vital Church programs have been crippled: The National Youth Program has been cancelled, distribution of important Church literature has been cut by 40%, Church employees including ministers have been dismissed, and welfare payments to Church families to permit them to attend religious convocations have been curtailed. (Declaration of Willis J. Bicket, Appendix C to Petition for Certiorari, No. 78-1720.)

REASONS FOR GRANTING THE WRIT.

I

The State's Action Against the Worldwide Church of God Violates Religious Freedoms Guaranteed by the First Amendment. Petitioner May Not Be Forced to Testify in Proceedings Which Exceed the Constitutional Power of the State.

A. Petitioner Has No Duty to Testify in Proceedings Beyond the Jurisdiction of His Inquisitor.

Petitioner may not be required to testify in proceedings which are beyond the jurisdiction of inquiry of the officer conducting the interrogation.

For example, in *Gojack v. United States*, 384 U.S. 702 (1966), this Court held that a witness could not be held in contempt for refusing to testify before a congressional investigative committee which was unauthorized to conduct the inquiry. Similarly here, Petitioner may not be compelled to testify in an inquiry by the Attorney General which is absolutely forbidden by the Religion Clauses of the First Amendment. (See also, *DeGregory v. Attorney General*, 383 U.S. 825, 829 (1966); *Sweezy v. New Hampshire*, 354 U.S. 234, 254 (1957) ["[I]f the Attorney General's interrogation of petitioner were in fact wholly unrelated to the object of the Legislature in authorizing the inquiry, the Due Process Clause would preclude endangering of constitutional liberties."].)

B. The Free Exercise and Establishment Clauses of the First Amendment Bar the Attorney General From Civil Jurisdiction to Supervise the Affairs of a Church.

The Attorney General, claiming the State has supervisory authority over churches, seeks to take control of the assets and records of the Worldwide Church

of God, to review and audit all Church records, to remove and replace present Church leaders, to restructure Church polity, and to determine whether Church assets are used for a proper religious purpose. The attempt to interrogate Petitioner is but one component of the State's exercise of a general supervisory power over the affairs of religious organizations. In the State's view, this supposed common-law/statutory (California Corporations Code §9505) power results simply from the State's characterization of the Church as a "public or charitable trust."

The mere statement of this premise illustrates the impermissibility of the proceedings under the First Amendment. Yet the California courts have turned a deaf ear to all claims of First Amendment rights. They have implicitly rejected the following holdings of this Court on the subject of church-state separation:

1. A state cannot strip a church of its religious character by labelling it a charitable trust, any more than it can label a Jehovah's Witness who sells the Bible or religious tracts "merely a bookseller" (*Murdock v. Pennsylvania*, 319 U.S. 105, 111 (1943)).

This Court has repeatedly rejected state or federal action which would subject religious institutions to state control applicable only outside the protective sphere of religion. Most recently, in *N.L.R.B. v. Catholic Bishop of Chicago*, U.S., 59 L.Ed.2d 533 (1979), this Court rejected the National Labor Relations Board's claim of jurisdiction over "religiously associated" private institutions which otherwise met the Board's jurisdictional requirement. To the Board, a church school was just a school and church teachers merely employees. This Court refused to let the Religion

Clauses of the First Amendment be swept aside by this simplistic characterization, stressing that religious schools involve religious teaching and teachers at such schools fulfill a religious function (59 L.Ed.2d at 541-543).

2. A state cannot constitutionally operate a church (*Everson v. Board of Education*, 330 U.S. 1, 15 (1957) ["Neither a state nor the Federal Government can set up a church Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa."])).

3. State supervision of church affairs necessitates unconstitutional entanglement with religion (*Lemon v. Kurtzman*, 403 U.S. 602, 619 (1971) ["A comprehensive, discriminating, and continuing surveillance . . . will involve excessive and enduring entanglement between state and church."])).

4. More specifically, the accounting of church finances results in unconstitutional entanglement even where the church is willing to accept an audit (*Lemon v. Kurtzman*, *supra*, 403 U.S. at 621-622 ["In particular the government's post-audit power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and which are secular creates an intimate and continuing relationship between church and state."])).

5. A state cannot constitutionally determine whether church funds are properly spent for religious purposes (*New York v. Cathedral Academy*, 434 U.S. 125, 133 (1977) ["The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitu-

tional guarantee against religious establishment”]; *Cf. Presbyterian Church v. Blue Hull Mem. Presb. Church*, 393 U.S. 440, 449-450 (1969) [“. . . First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice [T]he departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.”)].

6. A state cannot constitutionally dictate the manner of church governance or decide who shall and shall not be a church leader (*Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) [Freedom of religion encompasses the power of religious bodies “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine”]; *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724 (1976) [“[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government”]; *Lemon v. Kurtzman*, *supra*, 403 U.S. at 625 [“The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice”]; see *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 369 (1970) (Brennan, J. concurring) [“To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control . . . would violate the First Amend-

ment in much the same manner as civil determination of religious doctrine.” (N. omitted.)]).

The State’s actions in the instant case plainly contravene these principles. By proceeding in this constitutionally-impermissible fashion the State exceeds its jurisdiction. Absent jurisdiction to inquire into and supervise the affairs of the Worldwide Church of God, the Attorney General may not compel Petitioner to testify.

II

The Order Compelling Petitioner to Testify While Concurrent Criminal Proceedings Are Pending Subverts His Constitutional Rights Under the Fifth and Fourteenth Amendments.

Since January of this year the criminal branch of the Internal Revenue Service has been conducting an investigation of Petitioner presumably based on the same events and circumstances under investigation by the State in the instant proceedings. Petitioner is also informed that the Attorney General has supplied and is supplying other criminal law enforcement agencies with information obtained by it in this supposedly civil proceeding.⁸ Petitioner contends that to compel him to submit to deposition by the Attorney General under such circumstances would subvert his constitutional right not to be called as a witness against himself as well as his right to due process of law.

⁸Indeed, while the Attorney General refuses to admit (or deny) that he has supplied other agencies with information, he has announced his intention to “refer any possible evidence of criminal conduct to those agencies primarily responsible for the enforcement of such criminal laws.” (Exh. I.)

A. The Attorney General May Not Conduct a Civil Proceeding to Discover Evidence for Use in a Criminal Prosecution.

The Attorney General may not employ civil proceedings for purposes of conducting a criminal investigation. Yet there is weighty evidence that he is doing this very thing, using this lawsuit as a "shortcut to goals otherwise barred or more difficult to reach." (*United States v. Procter & Gamble Co.*, 356 U.S. 677, 683 (1958).)

1. The Attorney General has gone on record that in 1978 he conducted an investigation which "revealed to a substantial certainty" that Petitioner was "guilty of misuse and misappropriation of millions of dollars." (Response to Order to Show Cause re Preliminary Injunction, p. 4, filed on or about April 4, 1979, in *Lopez, et al. v. State of California*, Los Angeles Superior Court No. C 276767). Since that time he has evidently received massive amounts of material from the receiver and possibly others describing in great detail Petitioner's relationship with the Church. Nevertheless, even now the Attorney General holds criminal action in abeyance, continues to seek civil discovery in the present action, and attempts to force Petitioner to testify in deposition.

2. Refusing to submit a declaration from the local head of his Criminal Division, the Attorney General instead submitted a declaration of a person in the Charitable Trusts Section, who later explained *he had been told* there was no pending criminal proceeding or investigation by the Attorney General.⁹

⁹Since the Attorney General has vehemently resisted informing Petitioner of the pendency of criminal investigations or proceedings, he can hardly argue that Petitioner's lack of knowledge forecloses objection that his constitutional rights are threat-

3. The Attorney General expressly refused to respond to interrogatories inquiring as to which other law enforcement agencies he is furnishing information obtained in this suit, objecting that Petitioner is not entitled to these facts. At the same time, the Attorney General has revealed he is in possession of over 800 Church documents, including letters to the ministry, contribution data, internal memoranda, and detailed financial information for a period of more than ten years. It appears that the bulk of this information, including the most sensitive and privileged materials, was unlawfully obtained.¹⁰

4. The Attorney General's giving of the *Miranda* warnings was a clear signal of the criminal base underlying the civil veneer of the proceedings. (See *United States v. Hankins*, 565 F.2d 1344, 1351 (5th Cir. 1978) ["The *Miranda* warnings given to Smith by the [Internal Revenue Service] was a clear signal of his potential criminal liability."].)

The Attorney General has skillfully wedged Petitioner into an incredible trilemma. Petitioner can (1) testify, in which case First Amendment rights are lost and anything he says may be used against him in pending or contemplated criminal proceedings; (2) stand on the First Amendment without asserting the Fifth Amendment, in which case he may be found in contempt and jailed, or (3) assert the Fifth Amendment,

ened by the concurrence of such proceedings. Indeed, the danger to Petitioner is exacerbated by this fact. (See *United States v. Rand*, 308 F.Supp. 1231, 1237 (N.D. Ohio 1970).)

¹⁰This evidence of the Attorney General's misuse of this civil proceeding should alone preclude further efforts to depose petitioner. (Cf. *United State v. Kordel*, 397 U.S. 1, 7, 11 (1970); *United States v. Simon*, 373 F.2d 649, 652 (2d Cir. 1967), vacated as moot 389 U.S. 425 (1967).)

in which case this fact will be used to disparage him with Church membership and may be asserted as a bar to his testimony at trial.

Had no *Miranda* warnings been given, Petitioner could prevent the Attorney General from making any use of his deposition should it be determined warnings were required. (*United States v. Lipshitz*, 132 F.Supp. 519, 523 (E.D.N.Y. 1955); *United States v. Guerrina*, 112 F.Supp. 126, 128-131 (E.D. Pa. 1953); and see *Romanelli v. C.I.R.*, 466 F.2d 872, 878-879 (7th Cir. 1972).) But since the warnings were given, Petitioner cannot later complain they were not or plead ignorance of the potential criminal use against him of his deposition.

If the Attorney General's ploy succeeds, Petitioner will have "had his rights" but have been powerless to enforce them. Both the requirement of due process of law and the Fifth Amendment compel condemnation of the Attorney General's conduct. Petitioner cannot constitutionally be compelled to resume his deposition.

B. The Attorney General May Not Call Petitioner as a Witness Against Himself While Criminal Proceedings Arising From the Same Alleged Facts Are Pending.

United States v. Parrott, 248 F.Supp. 196 (D.D.C. 1965), frames the initial question for analysis (at p. 199):

"May the Government by bringing a parallel civil proceeding avail itself of the almost unlimited opportunity that a civil litigant has to take extensive depositions of the other party to the civil proceeding and then utilize the fruits of this interrogation . . . in the preparation of the criminal case?"

To frame the question is to answer it. In *Parrott*, "The court holds that the Government may not bring a parallel civil proceeding and avail itself of civil discovery devices to obtain evidence for subsequent criminal prosecution." (At p. 202.) (See, also, *McSurely v. McClellan*, 426 F.2d 664, 671-672 (D.C. Cir. 1970) ["[C]ivil discovery may not be used to subvert limitations on discovery in criminal cases either by the Government or by private parties." (Ns. omitted.)]; *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962), cert. denied 371 U.S. 955 ["A litigant should not be allowed to make use of the liberal civil discovery proceedings applicable to a civil suit as a dodge to avoid the restrictions on criminal discovery. . . ."].)

The instant case varies from these cases only in that, to Petitioner's knowledge, the California Attorney General has not yet filed his own criminal charges. The Attorney General is cunningly attempting to rush discovery to completion here *before* criminal proceedings are brought by him. There is no question he intends to bring criminal proceedings or have them brought even though, as Petitioner believes, the evidence will exonerate him of all accusations of criminal conduct.

In *Perry v. McGuire*, 36 F.R.D. 272 (S.D.N.Y. 1964), plaintiff sought discovery against a defendant who faced criminal charges on the basis of the same facts alleged in the civil suit. In holding that civil discovery should be stayed pending determination of the criminal proceedings, the Court stated (at p. 273):

"Assuming that the complaint sets forth a valid cause of action in fraud and deceit [citation], it seems clear that to require defendant . . . to respond to over 100 interrogatories at this time

would be oppressive and would infringe on his constitutional rights. [Citations.] [¶] The same must necessarily be true as to the noticed depositions of defendant. . . .”

In *Paul Harrigan & Sons v. Enterprise Animal Oil Co.*, 14 F.R.D. 333 (E.D. Pa. 1953), plaintiff filed a civil antitrust suit on the heels of defendants’ indictment based on the same allegations. Postponing discovery against defendants, the Court held (at p. 335):

“[T]he information sought to be elicited by the plaintiff in these interrogatories may well provide proof to the Government from which it may establish the criminal charges against the indicted defendants. To compel discovery under such circumstances would contravene rights guaranteed by the Fifth Amendment to the individual defendants.”

To the same effect is *National Discount Corp. v. Holzbaugh*, 13 F.R.D. 236 (E.D. Mich. 1952), where, during the pendency of a civil action and after oral examination of defendant had begun, a criminal indictment based on the same facts was returned. The Court granted defendant’s motion terminating the deposition, stating (at p. 237):

“To require the defendant . . . to submit himself to the plaintiff for further oral examination in this civil action, wherein . . . the fabric of the fraud is identical with the fraud embraced by the allegations contained in the criminal proceeding now pending against him . . . would be oppressive and, at least, an indirect invasion of his constitutional rights.”

Obviously, the threatened invasion of Petitioner’s due process and Fifth Amendment rights is even greater

where the civil action is brought by a governmental agency rather than a private party. In the instant case the Attorney General claims he is duty-bound to refer any information relative to possible criminal conduct to other agencies, and he is apparently doing so. If there is such a duty, the California courts could not even protect Petitioner’s rights (as was done in *Securities & Exch. Com’n v. Gilbert*, 79 F.R.D. 683, 687 (S.D.N.Y. 1978)), by ordering one agency not to furnish another with information procured in the course of civil discovery.

A case identical to the instant one in all critical respects is *United States v. Hankins*, *supra*, 565 F.2d 1344. In a nominally civil tax investigation, a certified public accountant was ordered to produce documents and present himself for oral examination. He argued that the investigation had assumed a predominantly criminal aspect. The Internal Revenue Service had made no recommendation for criminal prosecution, but unequivocally stated the accountant would probably be prosecuted should evidence of criminal conduct on his part be discovered.

On these facts the Court stated (at p. 1351):

“[T]he Government argues that Smith can be compelled to appear, take the witness stand, and either answer the questions the Government asks, or plead his Fifth Amendment protection on a question-by-question basis. . . . [W]e disagree. Were Smith the target of an investigation for robbing a bank, he would unquestionably have the right to stand on his silence. There is no significant difference between Smith as a suspected partici-

pant in a tax fraud and Smith as a suspected bank robber.”

The order requiring appearance for oral examination was reversed in *Hankins*. So it should be here.

III

Petitioner, at the Focus of a Criminal Investigation, May Not Be Compelled by Law Enforcement Officers to Testify After He Has Been Advised of His Right to Remain Silent and Has Exercised That Right.

Custodial interrogation of a suspect by law enforcement officers is inherently coercive. Interrogation must cease if the suspect at any time invokes his right to remain silent (*Miranda v. Arizona*, 384 U.S. 436 (1966); *Michigan v. Mosley*, 423 U.S. 96, 104 (1975) [suspect's right to cut off questioning must be “scrupulously honored”]). As we demonstrate below, Petitioner is a suspect in an essentially criminal investigation; he has invoked his right to remain silent under custodial interrogation by law enforcement officers investigating the subject matter of the potential criminal charges against Petitioner; he cannot be forced, under the guise of civil deposition proceedings and the threat of civil and penal sanctions, to submit to further custodial interrogation.

A. The Attorney General's Investigation Is Criminal in Nature.

Despite his disclaimers, the investigation undertaken by the Attorney General in this case is patently criminal in nature:

1. The Internal Revenue Service is conducting a concurrent criminal investigation, and the Attorney General has stated his intention to turn over any evi-

dence gathered in his investigation to other criminal investigations. Indeed, in a letter to the California Supreme Court in this proceeding, the Attorney General states it is well known that Petitioner is the subject of a pending criminal proceeding. Moreover, there is evidence the Attorney General is currently distributing information obtained in this action to other law enforcement agencies to aid in criminal investigation or to induce institution of criminal proceedings by them.

2. The Attorney General's charges, though not framed in an indictment, are nevertheless clearly tantamount to criminal accusations. These charges include pilfering of Church property (California Penal Code §508; California Corporations Code §2255), misuse of Church property (California Penal Code §508; California Corporations Code §§2254-2255), sale of Church property below value (California Corporations Code §2253), destruction of Church records (California Corporations Code §2255), and diversion of Church property to personal use (California Penal Code §508; California Corporations Code §§2253, 2255). Moreover, the remedies sought by the Attorney General against Petitioner, including forfeiture of office and the right to hold future offices, are clearly penal in nature.

3. The Attorney General has indicated his own belief in the criminal nature of the proceedings by advising Petitioner of his *Miranda* rights (See *United States v. Hankins*, *supra*, 565 F.2d 1344, 1351). The Attorney General explained he did not want Petitioner later to complain he was not advised of his rights when the recorded interrogation is used against him in a criminal proceeding. Moreover, the Attorney General failed to furnish, as requested by the trial court,

a declaration from his Criminal Division stating that no criminal investigation was contemplated (Exh. H, p. 6).

4. As we have already shown, the Attorney General has no legitimate civil grounds for inquiring into the affairs of the Church. His only remaining purpose must be in a criminal investigation and prosecution.

The Attorney General's labelling of the action as "civil" is irrelevant. In *Mathis v. United States*, 391 U.S. 1 (1968), a person in custody for unrelated reasons was questioned as part of a "routine tax investigation." Upholding the necessity for *Miranda* warnings this Court held (at p. 4):

"It is true that a 'routine tax investigation' may be initiated for the purpose of a civil action rather than criminal prosecution. To this extent tax investigations differ from investigations of murder, robbery, and other crimes. But tax investigations frequently lead to criminal prosecutions, just as the one here did. In fact, the last visit of the revenue agent to the jail to question petitioner took place only eight days before the full-fledged criminal investigation concededly began. And . . . there was always the possibility during his investigation that his work would end up in a criminal prosecution. We reject the contention that tax investigations are immune from the *Miranda* requirements for warnings to be given a person in custody."

B. The Attorney General's Criminal Investigation Has Focused on Petitioner.

More than three months ago the Attorney General represented that he had conducted an investigation in 1978 which revealed "to a substantial certainty that Herbert W. Armstrong, the Pastor General of the Worldwide Church of God, and Stanley Rader, the Treasurer and General Counsel of the Church, among others, were guilty of misuse and misappropriation of millions of dollars of Church assets." (Response to Order to Show Cause Re Preliminary Injunction, p. 4, filed on or about April 4, 1979 in *Lopez, et al. v. State of California*, Los Angeles Superior Court No. C 276767.) To this very Court the Attorney General has stated, "Much of the alleged fraud in this case consists of transactions between Defendant Rader or businesses controlled by him" and the Church. (Opposition to Petition for Certiorari (No. 78-1720), p. 23).

The Attorney General's comments in and out of the courtroom leave no room for doubt Petitioner is the focus of the Attorney General's criminal investigation.

C. The Court-Ordered Deposition, Taken in the Offices of the Attorney General Under Threat of Civil and Penal Sanctions, Is a Custodial Interrogation.

The touchstone for invocation of *Miranda* rights is custodial interrogation by law enforcement officials. "The *Miranda* opinion declared that the warnings were required when the person being interrogated was

'in custody at the station or otherwise deprived of his freedom of action significant in any way.' " (*Orozco v. Texas*, 394 U.S. 324, 327 (1969).) Under controlling standards, Petitioner was subjected to custodial interrogation:

1. Petitioner was interrogated in the offices of the Attorney General, the State's highest law enforcement official. (See *Miranda v. Arizona*, *supra*, 384 U.S. 436, 445 ["In each [case before the Court], the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world." (emphasis added)]; *People v. Arnold*, 66 Cal.2d 438, 448, 58 Cal.Rptr. 115, 426 P.2d 515 (1967) ["The coercive effect does not disappear because the instrumentality of interrogation is a prosecuting attorney instead of a police officer or because the locale of the query is the chamber of the prosecution rather than the policeman."].)

2. Petitioner's presence was compelled by court-issued subpoena. (See *People v. Arnold*, *supra*, 66 Cal.2d 438, 448 [person "authoritatively summoned" to district attorney's office for questioning]; *United States v. Bachman*, 267 F.Supp. 593 (W.D. Pa. 1966) [no custodial interrogation where defendant was not "under indictment or arrest, subpoenaed or otherwise deprived of his freedom of action" (emphasis added)].)¹¹

¹¹While it seems clear that the compulsion of court process for questioning at the Attorney General's Office thus constitutes custody for *Miranda* purposes, this is apparently an issue of first impression for this Court.

3. The Attorney General's giving of the *Miranda* warnings itself indicates the coercive nature of the interrogation. (*Beckwith v. United States*, 425 U.S. 341, 348 (1975); *United States v. Caiello*, 420 F.2d 471, 473 (2d Cir. 1969).)

In sum, the circumstances of Petitioner's interrogation were precisely those necessitating the giving of *Miranda* warnings. The Attorney General recognized this when he gave the warnings. Petitioner properly invoked his right to remain silent and to terminate questioning. The order that Petitioner once again submit to custodial interrogation is a travesty. That he should face a contempt citation for exercising his constitutional rights is an outrage.

Conclusion.

The State of California, acting in the person of the Attorney General, has completely had its way in its own courts. The State asserts a general supervisory power over the affairs of religious organizations, and the State courts enforce this power. The State employs civil proceedings as a guise for criminal discovery, invading Petitioner's constitutional rights, and the State courts see no objection to the proceedings. The State insists it may inform Petitioner of his right to remain silent and then compel him to testify, and the State courts order Petitioner to speak.

Petitioner respectfully submits that it falls to this Court to declare that the First, Fifth and Fourteenth

Amendments afford meaningful protection of individual rights. The trial court's order compelling Petitioner to testify should be reversed.

Respectfully submitted,

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of

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of

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of

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A Law Corporation

Counsel for Petitioners.

APPENDIX A.

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

July 5, 1979

I have this day filed Order Hearing Denied.

In re: 2 Civ. No. 56345, Worldwide Church of God,
Inc. vs. Superior Court, Los Angeles.

Respectfully,

G. E. BISHEL
Clerk

APPENDIX B.

California Corporations Code Section 9505:

"A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure."

APPENDIX C.

Notice of Ruling on Motion for Order Compelling Deponent Stanely R. Rader to Answer Questions Propounded at Deposition.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, v. Worldwide Church of God, Inc., a California nonprofit Corporation, et al., Defendants. No. C 267-607.

PLEASE TAKE NOTICE that plaintiff's Motion for Order Compelling Deponent to Answer Questions Propounded at Deposition and Motion for Sanctions came on regularly for hearing on May 7, 1979 in Department 80 of the above entitled court, Judge Thomas T. Johnson presiding. After considering moving and opposing papers, declarations in support thereof, and hearing oral argument thereon, the court granted the motion and ordered that Stanley R. Rader make himself available on May 29, 1979 at 10:00 a.m. in the offices of the Attorney General located at 3580 Wilshire Boulevard, Suite 500, Los Angeles, California 90010 for the purposes of completing his deposition.

DATED:

GEORGE DEUKMEJIAN, Attorney General

LAWRENCE R. TAPPER

LAUREN R. BRAINARD

Deputy Attorneys General

By

LAUREN R. BRAINARD

Deputy Attorney General

Attorneys for Plaintiff